



February 21, 2011

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

Re: Proposed Rules on Debit Card Interchange Fees, Docket No. R-1404

Submitted electronically: [www.regulations.gov](http://www.regulations.gov)

Dear Ms. Johnson:

As a third party administrator that utilizes cards used in connection with health care and employee benefit programs like Flexible Spending Arrangements (FSAs), Health Reimbursement Arrangements (HRAs), and Health Savings Accounts (HSAs), Aetna is writing to express opposition to the rules proposed (the "Proposed Rules") by the Board of Governors of the Federal Reserve System (the "Federal Reserve") to implement the debit interchange and network routing and exclusivity provisions (the "Durbin Amendment") of Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").<sup>1</sup> Because no public hearings were held on the Durbin amendment, there was no opportunity to present to the Federal Reserve the unintended consequences of the Proposed Rules, particularly in regard to prepaid cards issued and used in conjunction with health card and related employee benefit programs such as FSAs, HRAs, and HSAs. For the reasons set forth below, we believe that the "one size fits all" approach applied to debit cards in the Proposed Rules is inappropriate for prepaid cards that support health and related employee benefits programs such as FSAs, HRAs, and HSAs. As a result, we respectfully request that the Proposed Rules be revised to reflect the unique requirements of these cards and the intent of Senator Dodd and Representatives Larsen and Frank, and exclude employee benefit cards from coverage under the Durbin Amendment.

As an initial matter, we note that more than 40 million working Americans participate in employee benefit arrangements that are administered using FSA, HRA, and/or HSA benefit accounts and tens of millions of cards have been issued in connection with such arrangements. Unlike traditional debit cards, which merely facilitate a payment transaction, employee benefit cards perform an invaluable task by electronically adjudicating and/or substantiating health and similar employee benefit claims. The operating rules for such arrangements were carefully crafted by the Internal Revenue Service (IRS) in a series of IRS Notices and are codified in proposed regulations issued under Section 125 of the Internal Revenue Code. Indeed, unlike other areas of health plan administration (where administrative costs can exceed 20% or more of the value of medical services rendered), automatic adjudication through health benefit cards provides for tax-compliant health plan administration at a fraction of the cost otherwise incurred. In addition to direct cost savings, employee benefit cards provide consumers with convenient

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<sup>1</sup> Debit Card Interchange Fees and Routing, 75 Fed. Reg. 81,722 (proposed Dec. 28, 2010) (to be codified at 12 C.F.R. pt. 235).

and immediate access to benefits, eliminating the need to pay out-of-pocket while submitting paper requests and waiting for reimbursement.

More specifically, we note the following concerns:

The Congressional Record clearly reflects that key members of Congress intended that employee benefit cards would be exempted from Section 920. During debate on the legislation, the sponsors of the legislation made clear that the interchange provisions were not intended to apply to health spending accounts. In the House, Representatives Barney Frank and John Larson made the following statements:

Mr. Larson of Connecticut: Madam Speaker, I rise for the purpose of engaging in a colloquy with Chairman Frank to clarify the intent behind section 1076 in this bill. The section amends the Electronic Fund Transfer Act to create a new section 920 regarding interchange fees. Interchange revenues are a major source of funding for the administrative costs of prepaid cards used in connection with health care and employee benefits programs like FSAs, HSAs, HRAs and qualified transportation accounts. These programs are lightly used by both the public and private sector employers and employees and are more expensive to operate because of substantiation than other regulatory requirements. Because of this, I would like to clarify that Congress does not wish to interfere with those arrangements in a way that could lead to higher fees being imposed by administrators to make up for lost revenue, which would directly raise health care costs and hurt consumers. This is clearly not something that was the intent that we'd like to do. Therefore, I ask Chairman Frank to join me in clarifying that Congress intends that prepaid cards associated with these types of programs should be exempted within the language of section 920(a)(7)(A)(ii)(II).

Mr. Frank of Massachusetts: If the gentleman would yield, he's completely correct. The Federal Reserve has the mandate under this, which originated in the Senate, to write those rules. We intend to make sure those rules protect institutions from being discriminated against since they're exempt from the regulation, State benefit programs, and these. So the gentleman is absolutely correct, and I can assure him that I expect the Federal Reserve to honor that. And if there is any question about it, I am sure we will be able to make sure that it happens.

156 Cong. Rec. H5225-5226 (June 30, 2010), *emphasis added*.

Senator Christopher Dodd made a similar statement for the record during legislative debate in the Senate:

Mr. President, I would also like to clarify the intent behind another of the provisions in the conference report to accompany the financial reform bill, H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 1075 of the bill amends the Electronic Fund Transfer Act to create a new section 920 regarding interchange fees. This is a very complicated subject involving many different stakeholders, including payment networks, issuing banks, acquiring banks, merchants, and, of course, consumers. Section 1075 therefore is also complicated, and I would like to make a clarification with regard to that section.

Since interchange revenues are a major source of paying for the administrative costs of prepaid cards used in connection with health care and employee benefits programs such as FSAs, HSAs, HRAs, and qualified transportation accounts—programs which are widely used by both public and private sector employers and which are more expensive to operate given substantiation and other regulatory requirements— we do not wish to interfere with those arrangements in a way that could lead to higher fees being imposed by administrators to make up for lost revenue. That could directly raise health care costs, which would hurt consumers and which, of course, is not at all what we wish to do. Hence, we intend that prepaid cards associated with these types of programs would be exempted within the language of section 920(a)(7)(A)(ii)(II) as well as from the prohibition on use of exclusive networks under section 920(b)(1)(A).

156 Cong. Rec. S5927 (July 15, 2010), *emphasis added*.

Congress clearly intended that health spending account debit cards, including cards used in connection with health FSAs, HRAs, and HSAs would not be subject to rulemaking with respect to interchanges. **Aetna recommends revisions to the proposed rule to make clear that health spending account debit cards are not included.**

The Federal Reserve appears to misunderstand the nature of FSA, HRA, and HSA card program structures in presuming (as indicated in the Proposed Rules) that these products are “asset accounts” that are subject to the Interchange Provisions of the Proposed Rules. In fact, these funds are employer-sponsored benefit arrangements that generally do not involve the establishment of individual “asset accounts” for covered employees. Employees who participate in these benefits have an unsecured right to have up to a specified amount of health care expenses or transportation expenses reimbursed by their employer. HSAs differ only in the fact that individuals or employers may establish and fund HSAs, however they must be set up in connection with a qualified high deductible health plan. The health plan is subject to limits on annual deductibles and out-of-pocket expenses, and the HSA is owned by the individual who may take the funds with them if they change jobs or health coverage.

Unlike generic debit cards in the marketplace today, which support both signature debit and PIN debit authorization methods, FSA and HRA cards and many HSA cards do not, as they use health expense adjudication technology, such as the IIAS standard. This technology is not supported by PIN debit Networks and yet to satisfy Network Exclusivity requirements under the Proposed Rules, issuers could be required to enable a PIN-debit Network. This requirement needlessly increases costs to issuers, merchants, employers and benefit plan administrators with no apparent benefit.

In addition to the PIN-debit routing issue, today neither payment cards, ISO standards, networks, issuers, acquirers, processors nor merchant terminals are designed to accommodate “two signature” cards, and it is unclear what would be required to do so, who would pay for it, how long such modifications to the U.S. debit infrastructure might take, and whether it could be done without impacting interoperability with other payment products, or non-U.S. cards or merchants. While the Federal Reserve acknowledged the challenges created by the application of the Network Exclusivity Prohibition to health benefit cards and that additional time was needed to carefully balance the pros and cons of imposing such requirements on the unique

infrastructure of existing employee benefit card arrangements, it did not exempt these products from that requirement of the Proposed Rules. We believe that such an exemption is warranted.

Costs associated with processing employee benefit cards are higher than ordinary debit transactions, and those benefit card processing costs will only increase under the Proposed Rules (e.g., adding duplicative processing networks). Consequently, the Federal Reserve's cap on interchange fees under the Proposed Rules will have a particularly negative effect on employers, issuers and plan administrators, who will be required to absorb higher costs even as interchange revenues are substantially decreased. As a result, employer plan sponsors may attempt to offset some of the increased costs by passing them on to individual employers or employees. Consumers certainly do not benefit from a loss of payment options, and we believe that this is exactly what will happen if the Proposed Rules are reflexively applied to employee benefit cards.

For all of the reasons identified above, we believe that cards associated with FSAs, HRAs, and HSAs should be exempt from the application of the Interchange and Network Routing and Exclusivity Provisions of Section 920 and we strongly urge the Federal Reserve to reconsider the Proposed Rules. At a minimum, we respectfully request that the Federal Reserve acknowledge that FSA, HRA, and HSA cards are exempt from the Interchange provision under the General Use Prepaid Exemption and/or the existing "bona fide trust" exception in Section 903 and, given the unique challenges that the Network Routing and Exclusivity requirements pose for these card types, that the Federal Reserve delay the effective date until the unique issues related to such arrangements have been properly explored and addressed by the Federal Reserve.

If the rules are made applicable to health spending account debit cards, we believe additional study is necessary to understand the unique features and requirements of such accounts.

**Aetna recommends that if health spending account debit cards are not excluded from the proposed rule, the Federal Reserve suspend application of the proposed rule to such accounts pending further study.**

We appreciate the opportunity to provide our views on this important issue. Please feel free to contact Marcia Vannuccini, at 860-273-7430, if you have any questions.

Sincerely,



Marcia Vannuccini  
Product Head  
Consumer Funds Services  
Aetna